CAROL V. MILLER

IBLA 82-777 Decided August 31, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application NM 52462.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings

An oil and gas lease application, form 3112-1 (September 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

APPEARANCES: Carol V. Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Carol V. Miller has appealed from the April 8, 1982, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting her simultaneously filed application for oil and gas lease NM 52462.

Appellant's application was drawn first for parcel 826 in the February 18, 1982, drawing. The application was rejected by BLM in a decision dated April 8, 1982, because she failed to answer questions (d) through (f) on the reverse side of the application card.

The portion of the application left uncompleted appears as follows:

> UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes): [Original in italics.]
>
> * * * * * * *
>
> (d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application or the offer or lease which may result? Yes [] No []
>
> (e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes [] No []
>
> (f) Does the undersigned have any interest in any other application filed for the same parcel as this application?
> Yes [] No []

Appellant filed a notice of appeal, received on April 26, 1982, in which she supplied the appropriate information. Appellant requested in her notice that her incomplete application be considered as an oversight and that the subsequently supplied information be deemed an adequate remedy for the mistake.

[1] Contrary to appellant's request, the applicable regulations clearly require rejection of the application. 43 CFR 3112.2-1(a) requires that an application be "completed, signed and filed pursuant to the regulations of this subpart." (Emphasis added.) 43 CFR 3112.6-1(a) provides that any application not filed in accordance with section 3112.2 shall be rejected. This Board has consistently held that an oil and gas lease application is not completed in accordance with 43 CFR 3112.2-1 or the explicit instructions on the application itself where questions (d) through (f) are left unanswered. E.g., James E. Webb, 60 IBLA 323 (1981); Clyde K. Kobbeman, 58 IBLA 268, 80 I.D. 915 (1981); 1/ Vincent M. D'Amico, 55 IBLA 116 (1981), appeal dismissed, D'Amico v. Watt, Civ. No. 81-2050 (D.D.C., Aug. 31, 1981). Those cases explain that answering questions (d) through (f) are distinct aspects of the application and require a response on the application itself. Failure of the applicant to check the appropriate box in response to each of the questions created defects in the application that are far from trivial. The application simply was not complete, and the regulations do not provide the option of answering the questions by addendum or other document. See James E. Webb, supra; Vincent M. D'Amico, supra.

1/ Appeal pending; Estate of Kobbeman v. United States, Civ. No. 82-0774 (D.D.C., filed Feb. 23, 1982).

Although failure to answer questions (d) through (f) is not expressly included among the defects listed in 43 CFR 3112.5, which sets forth criteria for screening application cards prior to a drawing, that omission does not mean BLM must accept appellant's application. Subsection (b) of that regulation notes that failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in that section or any reasons set forth in section 3112.6. As noted, section 3112.6-1(a) makes clear that an application will be rejected if not filed in accordance with section 3112.2 which requires that applications be "completed." We may not justify, simply by saying this violation is unimportant, a departure in a single case from an otherwise consistent policy of rejecting applications that do not conform to the regulation. See McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

Furthermore, appellant's failure to check all the items on the form cannot be cured by a simple addendum as appellant suggests. Giving an unqualified first-drawn applicant the opportunity to make an amended filing would infringe on the rights of the second-drawn, first qualified applicant. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976); accord Moss v. Andrus, Civ. No. 78-1050 (10th Cir., Sept. 20, 1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge